

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE/ANDERSON DIVISION

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| Pamela Chapman, |) | Civil Action No.: 8:08-2374-RBH-BHH |
| |) | |
| |) | |
| |) | |
| vs. |) | <u>REPORT AND RECOMMENDATION</u> |
| |) | <u>OF MAGISTRATE JUDGE</u> |
| Michael J. Astrue, Commissioner, |) | |
| Social Security Administration |) | |
| |) | |
| Defendant. |) | |

The above-styled action is before the court on Plaintiff's motion for relief from judgment under Rule 60, and for entry of judgment [Doc #18].

On December 11, 2008, this court entered an order remanding this case to the Commissioner of Social Security for further action under sentence Six of 42 U.S.C. § 405(g). On December 11, 2008, the Clerk of the court entered a judgment in this case.

When a case is remanded pursuant to Sentence Six of § 405(g), the District Court retains jurisdiction over the appeal pending the Commissioner's consideration. See Sullivan v. Finkelstein, 496 U.S. 617, 625-27 (1990); 42 U.S.C. § 405(g). Furthermore, Plaintiff presents that the proceedings on remand have been concluded and Plaintiff is now a prevailing party. On April 8, 2009, the Commissioner issued a final decision in favor of Plaintiff. Accordingly, it now is appropriate to enter a judgment under Sentence Four affirming the action below and to enter a final judgment.

Based on the foregoing, it is recommended that judgment was entered in error and that the judgment entered December 11, 2008, should be vacated. It is further

recommended that the clerk of court now enter a judgment in favor of Plaintiff. All parties have consented hereto.

s/Bruce Howe Hendricks
United States Magistrate Judge

November 18, 2009
Greenville, South Carolina